

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 62 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT : Appellant.

Versus

S D DESAI & CO. : Respondent.

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Appearance:

Mr. B.D. Desai, AGP for the appellant.

MR KG SUKHWANI for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 14/03/2000

ORAL JUDGEMENT : (Per: H.R. Shelat, J. )

Being aggrieved by the judgment and decree dated  
30th April 1980, passed by the then learned Civil Judge  
(S.D.), Navsari, in Special Civil Suit No. 87 of 1976 on  
his file, directing the present appellant to pay Rs.  
49,430.56 ps., to the respondent together with interest

thereon at the rate of 6% p.a., from the date of the suit till realisation and also with proportionate costs, the original-defendant has preferred this appeal.

2. The facts, which led the present appellant to file this appeal, may in brief be stated. The respondent is a registered partnership firm carrying on business of Architects, Engineers and Builders at Navsari. The appellant wanted to construct a bridge across the river Damanganga, near Village Rakholi on Silvassa Rakholi-Dapada-Khanvel Mandani Road in the year 1968-69. The tenders thereof were therefore invited. The respondent submitted his tender and offered to construct the bridge for Rs. 9,44,867.80 ps. against the estimated cost of Rs. 985,090/-. The tender of the respondent was accepted and necessary agreement in Form B-2/40 was then entered into. As per the term of the agreement the respondent had to pay the amount of deposit in two parts or at a time in lumpsum. He initially paid Rs. 19,702/= as deposit, and rest of the likewise amount, namely Rs. 19,702/= was deducted at the rate of 4% while making the payment of the running bills. In all, therefore, the appellant recovered Rs. 39,404/= by way of security deposit from the respondent. The respondent then completed the work and presented his final bill which came to be passed on 14th May 1973 and payment of that bill was also made to him. The respondent had to construct extra span for which he put up his claim but the appellant turned down his claim. He therefore filed the suit to recover Rs. 1,19,058.52 ps., giving the notice contemplated vide Section 80 of the Civil Procedure Code.

3. On being served with the summons the appellant appeared and resisted the suit. The then learned Civil Judge (S.D.) then framed necessary issues and considering the evidence on record passed the decree as aforesaid. It is against that judgment and decree dated 30th April 1980, the present appeal is filed by the appellant-State of Gujarat.

4. At the time of hearing, when we made query to the learned APP, Mr. B.D. Desai, he with his usual candour tapered of his submissions confining to the only issue regarding limitation. In this appeal, therefore, the only point which is posed before us for consideration is regarding the limitation. We have, therefore not preferred to state the facts in details and also necessary facts covering different grounds raised in the memo of appeal.

5. It is the contention of the appellant that the final bill came to be passed and payment was made on 14th May, 1973. In such cases, Article 113 of the Indian Limitation Act would be applicable which provides the period of 3 years to file such suit and the period of 3 years begins to run from the day when right to sue accrues. In such case, the right to sue accrues from the day the final bill is passed and payment is made. The period of limitation in this case therefore began to run from 14th May 1973. The respondent therefore ought to have filed the suit latest by 14th May 1976, but when the suit in this case is filed on 7th August 1976 it would appear that the suit was filed late by around 3 months. The learned Judge therefore ought to have dismissed the suit holding that it was barred by the period of limitation.

6. In reply to such contention, Mr. Sukhwani, the learned advocate representing the respondent submits that the period of limitation ordinarily would begin to run from the day when the final bill is passed and the payment thereof is made, but in the case on hand the last payment cannot be said to have been made on 14th May 1973 when the final bill was passed. In the case on hand, Rs. 19,702/- were held back in piecemeal by the appellant while making the payment of the running bills tendered by the respondent, and the payment of the said sum was made back on 19th February 1974 when the security deposit amount of Rs. 19,702/= was also paid. The period of limitation therefore in this case began to run not from 14th May 1973 but from 19th February 1974 when last payment of Rs. 19,702/= was made. The respondent had therefore to file the suit latest by 19th February 1977; instead that he filed the suit on 7th August 1976 which was earlier by around 6 months. The learned Judge was, therefore, right in holding that the suit was within time.

7. In view of such rival contentions, the only point which arises for examination is whether the suit in the present case can be said to have been filed within time or barred by the period of limitation. Looking to the claim advanced, Article 113 of the Indian Limitation Act would apply but from what day the period of limitation of 3 years began to run is to be determined. Ordinarily in such cases when the final bill is passed and the payment thereof is made, the period of limitation will begin to run, but in the case on hand, when the final payment can be said to have been made has to be ascertained. As per Clause 1 of the contract, the contractor whose tender is accepted has to make the payment of security deposit

either in cash initially or partly in cash initially which would be 50% amount and partly the remaining 50% amount he can pay preferring the deduction to be made from the current bills. In the case on hand, admittedly, the respondent preferred to make the payment of security deposit in two parts. Initially he made the payment of Rs. 19,702/- and rest of the equal amount was paid by him as and when he tendered the current bills and the amounts thereof were paid deducting 4% of the amounts of the bill to be paid. When accordingly, the amount of security deposit is paid and the same is paid subsequent to the final bill was passed, is it a payment of the security deposit amount made or the payment of the work done is made is the decisive factor in this case. A likewise question arose before this Court in Civil Revision Application No. 1201 of 1971, wherein it is made clear that if the amounts are held back while making the payment of the running bill and retained by the Government as security deposit, it will not be a case of payment of security deposit, pure and simple, alike the sums paid by the contractor at the commencement of the contract. The security deposit amount held back while making the payment of the current bill must be treated to be the sums payable by the contractor for the work done by it. Even if the sums deducted while making the payment of the running bill are held back and treated to be the security deposit, the labelling as such will not change the original character of the amount and though the same is held back as security deposit, it will not cease to have the character of the amount which was due and payable to the petitioner i.e., the contractor for the work done by him. It was then held in that case that the payment of the amount did not constitute merely the return of the security deposit but amounted also to the final payment of the amount which was due to the petitioner. In that case, it is held that payment made from the opponent was for the work done by the former for the latter. The likewise arguments advanced on behalf of the opponent in that case was negatived and it was held that the period of limitation began to run from the day when the amounts held back and treated to be a security deposit were paid. Again, a similar question arose before this Court in First Appeal No. 72 of 1979 and the Division Bench of this Court on 11th July 1990, agreeing with the view taken by this Court in the case of M/s. Virchand Sankalchand and Company, took the similar view holding that the final payment can be said to have been made not on the day when the final bill is passed and payment thereof is made, but on the day subsequently when the amounts held back while making the payment of the current bills and the payment thereof came to be made

lastly on 19th February 1974. In this case, therefore, final payment can be said to have been made on 19th February 1974 and not 14th May 1973. The period of limitation in this case therefore began to run not from 14th May 1973 as canvassed before us, but from 19th February 1974 when the last payment as stated hereinabove was made. The suit was therefore required to be filed within 3 years therefrom, i.e., latest by 19th February 1977, instead that the suit was filed on 7th August 1976. It follows, therefore, that the suit was filed before the period of limitation of 3 years expired. The suit, therefore, in view of the fact, cannot be said to have been barred by the period of limitation. The learned Judge was, therefore, right in holding that the suit was filed within time and passing the decree.

8. For the aforesaid reasons, the appeal is required to be dismissed and the same is accordingly dismissed with no order as to costs. The bank guarantee furnished by the respondent shall stand discharged.

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(rmr).